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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/531,680

11/07/2005

Klaus Russke

BU-07PCT

2233

40570 7590 06/17/2008  
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EXAMINER

PEDDER, DENNIS H

ART UNIT

PAPER NUMBER

3612

MAIL DATE

DELIVERY MODE

06/17/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/531,680	<b>Applicant(s)</b> RUSSKE, KLAUS	
	<b>Examiner</b> Dennis H. Pedder	<b>Art Unit</b> 3612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 4/08 & 5/08.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 April 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Drawings***

0.5 The drawing was received on 4/21/2008. This drawing is approved.

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### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3, 5, 7, 8, 9 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by France-Design, FR 2694245, cited by applicant.

3. Applicant's remarks relative to the above patent document are not understood. France-Design clearly has rear roof part 4/4, front roof parts 1,2 with 1 movable over 2 and then lowerable in the nested state into the body in vertical position as seen in transitioning from figures 3-5.

4. As to claim 5, the independent movement is seen in figures 1-3.

### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. A conditional phrase "can be" is indefinite as to scope of the claim.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1, 3-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Antreich in view of France-Design.

Antreich has rigid rear 5, rear window shown, front roof section with rigid parts 3,4, with 4 behind, and with 3 movable over 4.

The lowered roof parts of Antreich are substantially horizontal. It would have been obvious to one of ordinary skill to provide in Antreich nearly vertical storage of overlapped front roof parts 9, 10 as taught by France-Design in figure 5 with the roof parts located below a beltline of the vehicle in order to retain maximum trunk storage space with the top collapsed.

As to claim 4, see four bar linkage at 17,18 with roof section 3 forming one bar.

As to claim 6, see figure 6 of Antreich.

As to claim 7, see figures 12, 13 and accompanying discussion.

As to claim 8, see figures 6 and 13.

As to claim 10, see four bar linkage 14,15, substantially mutually parallel as is that of applicant. Further, dual swivel arms, as seen in France-Design, on each side are deemed to be merely an obvious duplication of parts.

As to claim 5, Antreich and France-Design both have independently movable front roof sections, the former seen in figures 6 and 7 and the latter in figures 1-3.

10. As to claim 11, the swivel arms of Antreich are substantially face to face in figures 5-6 as would be the duplicated arms of France-Design as discussed above. Formation of the surrounding and underlying covering of Antreich in two parts is deemed to be an obvious expedient in the art to enable smaller presses for the metal.

11. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Antreich in view of France-Design as applied to claim 1 above and further in view of Weissrich et al.

It would have been obvious to one of ordinary skill to provide in Antreich, as modified by France-Design, computer control of roof position as is common knowledge in the art as taught by Weissrich et al. in order to fully control roof movement.

### ***Response to Arguments***

12. Applicant's arguments filed 4/21/2008 have been fully considered but they are not persuasive.

The arguments are not understood. The advantages of applicant's invention as argued, are clearly shown in France-Design in the smaller compass of the roof as it transitions to open position.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis H. Pedder whose telephone number is (571) 272-6667. The examiner can normally be reached on 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn D. Dayoan can be reached on (571) 272-6659. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dennis H. Pedder/  
Primary Examiner, Art Unit 3612

Dennis H. Pedder  
Primary Examiner  
Art Unit 3612

DHP  
6/11/2008

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